

ORIGINAL

1 LYNN HUBBARD, III, SBN 69773
2 SCOTTLINN J HUBBARD, IV, SBN 212970
3 **DISABLED ADVOCACY GROUP, APLC**
4 12 Williamsburg Lane
5 Chico, CA 95926
6 Telephone: (530) 895-3252
7 Facsimile: (530) 894-8244

8 Attorneys for Plaintiff

FILED

08 APR -2 AM 9:39

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

DEPUTY

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11
12
13 BARBARA HUBBARD,

14 Plaintiff,

15 vs.

16 SMART & FINAL STORES, LLC
17 dba SMART & FINAL #463;
18 SMART & FINAL PROPERTIES I,
19 LLC,

20 Defendants.

No.

'08 CV 0564 W LSP

Plaintiff's Complaint

I. SUMMARY

1
2 1. This is a civil rights action by plaintiff Barbara Hubbard
3 (“Hubbard”) for discrimination at the building, structure, facility, complex,
4 property, land, development, and/or surrounding business complex known as:

5 Smart & Final #463
6 3141 Main Street
7 Chula Vista, CA 91911
8 (hereafter “the Store”)

9 2. Hubbard seeks damages, injunctive and declaratory relief, attorney
10 fees and costs, against Smart & Final Stores, LLC dba Smart & Final #463 and
11 Smart & Final Properties I, LLC (hereinafter collectively referred to as “Smart &
12 Final”) pursuant to the Americans with Disabilities Act of 1990, (42 U.S.C. §§
13 12101 et seq.), and related California statutes.

14 II. JURISDICTION

15 3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and
16 1343 for ADA claims.

17 4. Supplemental jurisdiction for claims brought under parallel
18 California law—arising from the same nucleus of operative facts—is predicated
19 on 28 U.S.C. § 1367.

20 5. Hubbard’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

21 III. VENUE

22 6. All actions complained of herein take place within the jurisdiction
23 of the United States District Court, Southern District of California, and venue is
24 invoked pursuant to 28 U.S.C. § 1391(b), (c).

25 IV. PARTIES

26 7. Smart & Final owns, operates, leases, or manages the Store, and
27 consists of a person (or persons), firm, or corporation.
28

1 8. Hubbard has multiple conditions that affect one or more major life
2 functions. She requires the use of motorized wheelchair and a mobility-equipped
3 vehicle, when traveling about in public. Consequently, Hubbard is “physically
4 disabled,” as defined by all applicable California and United States laws, and a
5 member of the public whose rights are protected by these laws.

6 V. FACTS

7 9. The Store is a sales or retail establishment, open to the public,
8 which is intended for nonresidential use and whose operation affects commerce.

9 10. Hubbard visited the Store and encountered barriers (both physical
10 and intangible) that interfered with—if not outright denied—her ability to use
11 and enjoy the goods, services, privileges, and accommodations offered at the
12 facility. To the extent known by Hubbard, the barriers at the Smart & Final
13 included, but are not limited to, the following:

- 14 • There is no accessible route from the public way;
- 15 • The tow-away signage posted is incorrect;
- 16 • The signage in the van accessible parking stall is not correct;
- 17 • All of the disabled parking spaces have excessive slopes and/or cross
18 slopes;
- 19 • At least one disabled parking space is not the correct length – it is too
20 short;
- 21 • None of the access aisles have the words “NO PARKING” painted inside
22 of them;
- 23 • The floor mats at the interior of the entrance door are not properly attached
24 to the floor and are easily caught in the wheels of a wheelchair;
- 25 • There are no checkout aisles designated as being accessible, nor are there
26 any stating that the aisle shall remain open at all times to persons with
27 disabilities;
- 28 • All but one of the aisles throughout the store are too narrow;

- 1 • The restroom door lacks the required strike side clearance on the push
- 2 side;
- 3 • The side grab bar is not mounted 12 inches from the back wall;
- 4 • The flush valve of the water closet is not located on the wide side;
- 5 • The disposable seat cover dispenser is mounted at more than 40 inches
- 6 from the floor and above the side grab bar;
- 7 • The disposable seat cover dispenser is an obstruction to the use of the side
- 8 grab bar;
- 9 • The pipes underneath the lavatory are not properly wrapped to prevent
- 10 burning; and,
- 11 • The restroom door lock requires pinching, twisting, and/or grasping to
- 12 operate.

13 These barriers prevented Hubbard from enjoying full and equal access.

14 11. Hubbard was also deterred from visiting the Store because she
15 knew that the Store's goods, services, facilities, privileges, advantages, and
16 accommodations were unavailable to physically disabled patrons (such as
17 herself). She continues to be deterred from visiting the Store because of the
18 future threats of injury created by these barriers.

19 12. Hubbard also encountered barriers at the Store, which violate state
20 and federal law, but were unrelated to her disability. Nothing within this
21 Complaint, however, should be construed as an allegation that Hubbard is
22 seeking to remove barriers unrelated to her disability.

23 13. Smart & Final knew that these elements and areas of the Store were
24 inaccessible, violate state and federal law, and interfere with (or deny) access to
25 the physically disabled. Moreover, Smart & Final has the financial resources to
26 remove these barriers from the Store (without much difficulty or expense), and
27 make the facility accessible to the physically disabled. To date, however, Smart
28

1 & Final refuses to either remove those barriers or seek an unreasonable hardship
2 exemption to excuse non-compliance.

3 14. At all relevant times, Smart & Final has possessed and enjoyed
4 sufficient control and authority to modify the Store to remove impediments to
5 wheelchair access and to comply with the Americans with Disabilities Act
6 Accessibility Guidelines and Title 24 regulations. Smart & Final has not
7 removed such impediments and has not modified the Store to conform to
8 accessibility standards. Smart & Final has intentionally maintained the Store in
9 its current condition and has intentionally refrained from altering the Store so
10 that it complies with the accessibility standards.

11 15. Hubbard further alleges that the (continued) presence of barriers at
12 the Store is so obvious as to establish Smart & Final's discriminatory intent.¹ On
13 information and belief, Hubbard avers that evidence of this discriminatory intent
14 includes Smart & Final's refusal to adhere to relevant building standards;
15 disregard for the building plans and permits issued for the Store; conscientious
16 decision to the architectural layout (as it currently exists) at the Store; decision
17 not to remove barriers from the Store; and allowance that the Store continues to
18 exist in its non-compliant state. Hubbard further alleges, on information and
19 belief, that Smart & Final is not in the midst of a remodel, and that the barriers
20 present at the Store are not isolated (or temporary) interruptions in access due to
21 maintenance or repairs.²

22 VI. FIRST CLAIM

23 Americans with Disabilities Act of 1990

24 Denial of "Full and Equal" Enjoyment and Use

25 16. Hubbard incorporates the allegations contained in paragraphs 1
26 through 15 for this claim.

27
28 ¹ E.g., *Gunther v. Lin*, 144 Cal.App.4th 223, fn. 6

² Id.; 28 C.F.R. § 36.211(b)

Hubbard v. Smart & Final Stores, LLC, et al.
Plaintiff's Complaint

1 17. Title III of the ADA holds as a “general rule” that no individual
2 shall be discriminated against on the basis of disability in the full and equal
3 enjoyment (or use) of goods, services, facilities, privileges, and accommodations
4 offered by any person who owns, operates, or leases a place of public
5 accommodation. 42 U.S.C. § 12182(a).

6 18. Smart & Final discriminated against Hubbard by denying “full and
7 equal enjoyment” and use of the goods, services, facilities, privileges or
8 accommodations of the Store during each visit and each incident of deterrence.

9 Failure to Remove Architectural Barriers in an Existing Facility

10 19. The ADA specifically prohibits failing to remove architectural
11 barriers, which are structural in nature, in existing facilities where such removal
12 is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). The term “readily
13 achievable” is defined as “easily accomplishable and able to be carried out
14 without much difficulty or expense.” *Id.* § 12181(9).

15 20. When an entity can demonstrate that removal of a barrier is not
16 readily achievable, a failure to make goods, services, facilities, or
17 accommodations available through alternative methods is also specifically
18 prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

19 21. Here, Hubbard alleges that Smart & Final can easily remove the
20 architectural barriers at the Store without much difficulty or expense, and that
21 Smart & Final violated the ADA by failing to remove those barriers, when it was
22 readily achievable to do so.

23 22. In the alternative, if it was not “readily achievable” for Smart &
24 Final to remove the Store’s barriers, then Smart & Final violated the ADA by
25 failing to make the required services available through alternative methods,
26 which are readily achievable.

1 Failure to Design and Construct an Accessible Facility

2 23. On information and belief, the Store was designed or constructed (or
3 both) after January 26, 1992—independently triggering access requirements
4 under Title III of the ADA.

5 24. The ADA also prohibits designing and constructing facilities for
6 first occupancy after January 26, 1993, that aren't readily accessible to, and
7 usable by, individuals with disabilities when it was structurally practicable to do
8 so. 42 U.S.C. § 12183(a)(1).

9 25. Here, Smart & Final violated the ADA by designing or constructing
10 (or both) the Store in a manner that was not readily accessible to the physically
11 disabled public—including Hubbard—when it was structurally practical to do
12 so.³

13 Failure to Make an Altered Facility Accessible

14 26. On information and belief, the Store was modified after January 26,
15 1992, independently triggering access requirements under the ADA.

16 27. The ADA also requires that facilities altered in a manner that affects
17 (or could affect) its usability must be made readily accessible to individuals with
18 disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering
19 an area that contains a facility's primary function also requires adding making
20 the paths of travel, bathrooms, telephones, and drinking fountains serving that
21 area accessible to the maximum extent feasible. Id.

22 28. Here, Smart & Final altered the Store in a manner that violated the
23 ADA and was not readily accessible to the physically disabled public—including
24 Hubbard—to the maximum extent feasible.

25
26
27
28 ³ Nothing within this Complaint should be construed as an allegation that plaintiff is bringing this action as a
private attorney general under either state or federal statutes.
Hubbard v. Smart & Final Stores, LLC, et al.
Plaintiff's Complaint

1 Failure to Modify Existing Policies and Procedures

2 29. The ADA also requires reasonable modifications in policies,
3 practices, or procedures, when necessary to afford such goods, services,
4 facilities, or accommodations to individuals with disabilities, unless the entity
5 can demonstrate that making such modifications would fundamentally alter their
6 nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

7 30. Here, Smart & Final violated the ADA by failing to make
8 reasonable modifications in policies, practices, or procedures at the Store, when
9 these modifications were necessary to afford (and would not fundamentally alter
10 the nature of) these goods, services, facilities, or accommodations.

11 31. Hubbard seeks all relief available under the ADA (*i.e.*, injunctive
12 relief, attorney fees, costs, legal expense) for these aforementioned violations. 42
13 U.S.C. § 12205.

14 32. Hubbard also seeks a finding from this Court (*i.e.*, declaratory
15 relief) that Smart & Final violated the ADA in order to pursue damages under
16 California's Unruh Civil Rights Act or Disabled Persons Act.

17 VII. SECOND CLAIM

18 **Disabled Persons Act**

19 33. Hubbard incorporates the allegations contained in paragraphs 1
20 through 30 for this claim.

21 34. California Civil Code § 54 states, in part, that: Individuals with
22 disabilities have the same right as the general public to the full and free use of
23 the streets, sidewalks, walkways, public buildings and facilities, and other public
24 places.

25 35. California Civil Code § 54.1 also states, in part, that: Individuals
26 with disabilities shall be entitled to full and equal access to accommodations,
27 facilities, telephone facilities, places of public accommodation, and other places
28 to which the general public is invited.

1 52. Smart & Final's non-compliance with these requirements at the
2 Store aggrieved (or potentially aggrieved) Hubbard and other persons with
3 physical disabilities. Accordingly, she seeks injunctive relief and attorney fees
4 pursuant to Health and Safety Code § 19953.

5 X. PRAYER FOR RELIEF

6 WHEREFORE, Hubbard prays judgment against Smart & Final for:

- 7 1. Injunctive relief, preventive relief, or any other relief the Court deems
8 proper.
- 9 2. Declaratory relief that Smart & Final violated the ADA for the purposes of
10 Unruh Act or Disabled Persons Act damages.
- 11 3. Statutory minimum damages under either sections 52(a) or 54.3(a) of the
12 California Civil Code (but not both) according to proof.
- 13 4. Attorneys' fees, litigation expenses, and costs of suit.⁴
- 14 5. Interest at the legal rate from the date of the filing of this action.

15
16 DATED: March 24, 2008

DISABLED ADVOCACY GROUP, APLC

17
18 

19 LYNN HUBBARD, III

20 Attorney for Plaintiff Barbara Hubbard

21
22
23
24
25
26
27
28

⁴ This includes attorneys' fees under California Code of Civil Procedure § 1021.5.
Hubbard v. Smart & Final Stores, LLC, et al.
Plaintiff's Complaint

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

BARBARA HUBBARD

DEFENDANTS

SMART & FINAL STORABLES, LLC dba SMART & FINAL #463;
SMART & FINAL PROPERTIES I, LLC

County of Residence of First Listed Defendant
SOUTHERN DISTRICT OF CALIFORNIA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

(c) Attorney's (Firm Name, Address, and Telephone Number)

DISABLED ADVOCACY GROUP, APLC (530) 895-3252
12 WILLIAMSBURG LANE CHICO, CA 95926

08 CV 0564 W LSP

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | | | |
|-----------------------------------------|----------------------------|----------------------------|---------------------------------------------------------------|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. Section 12101, et seq.

Brief description of cause:
Ongoing violations of the ADA Construction Standards

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

03/24/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

119207

AMOUNT

\$350

APPLYING IFP

JUDGE

MAG. JUDGE

see 4/2/08

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

149267 - SH

**April 02, 2008
09:01:02**

Civ Fil Non-Pris

USAO #: 08CV0564

Judge.: THOMAS J WHELAN

Amount.: \$350.00 CC

Total-> \$350.00

FROM: HUBBARD V. SMART & FINAL ET AL